

**MINUTES OF THE JULY 2012 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, July 10, 2012, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, Thomas Courtney, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, and Guy Vander Linden were present. Senator John P. Kibbie was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9:30 a.m.

Fiscal overview Aaron Todd presented the LSA fiscal report.

FAIR BOARD Gary Slater, Stacy Jorgensen, and David Dorff, assistant attorney general, represented the board.

ARC 0163C Amendments to chs 1 and 3 to 8 pertain to general practices and year-round activities related to the state fair. Mr. Slater stated that the changes suggested by the committee at the April meeting had been made.

Discussion ensued regarding the removal of an objection to rule 371—4.8(173) imposed by the committee in 1981 and renewed in 1995.

Mr. Royce pointed out that in 1987, Iowa Code section 173.23 was amended to allow the board a prior lien on property brought onto the fairgrounds by a licensee. Mr. Dorff questioned the renewal of the objection in 1995 given that the statute was amended in 1987. Sen. Bartz stated that perhaps the statutory change made the objection moot. Mr. Dorff concurred with Sen. Bartz and noted that the rule provides a licensee with a methodology for challenging the placement of a lien on the licensee's property and still provides the licensee due process. In response to an inquiry from Sen. Seymour, Mr. Slater stated that rarely is a licensee able to avoid payment of fees, taxes and other obligations for two reasons: (1) non-commerce-related licensees prepay for their spaces; and (2) commerce-related licensees must pay on a daily basis the obligations related to the previous day's sales.

After discussion, committee members requested that Mr. Dorff and the board make a presentation regarding the objection at the August meeting, at which time the committee will determine whether or not to remove the objection.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

ARC 0180C Proposed amendments to chs 1, 20, 50 to 54, 56 to 61 and 63 pertain to the information technology enterprise and the human resources enterprise.

Discussion pertained to discretionary payments, retention points related to reductions in force, and eligibility for reinstatement after retirement.

Sen. Courtney expressed concern about the possibility of favoritism in the granting of discretionary payments (bonuses) in Item 35 and arbitrary exemptions from reductions in force in Items 55 and 57, about sufficient personnel to conduct performance reviews on a timely basis, and about a process for employee appeal of a supervisor's decision. In response to Sen. Courtney's questions, Mr. Hunter stated that the director must approve the discretionary payments. He stated that the methodology for reductions in force is intended to maintain a true merit system and that the next level supervisor must also approve the performance review. Mr. Hunter stated that annual performance reviews are the standard. He noted that an employee may appeal a decision through the noncontract grievance process and that consistency in the performance review ensures that the same expectations apply to each employee in the same position. Sen. Bartz stated the opinion that in Item 55, the qualifier added to determine exemptions from reductions in force is less, not more, arbitrary than the existing qualifiers.

Administrative Services Department (continued)

Sen. Courtney requested that Mr. Hunter provide the committee with a list of the employees who within the past two years have been granted discretionary payments and the amounts of those payments. Sen. Courtney and Rep. Olson asked that in Items 55 and 57, the phrase “given within the last 12 months” be reconsidered and perhaps omitted from the phrase “the most recent performance review given within the last 12 months.” Rep. Pettengill requested that the board reexamine the language added in Item 42 regarding the restriction on reinstatement of retired employees in light of 2012 Iowa Acts, House File 2465, division II, section 21, regarding certain health care professionals. Mr. Hunter agreed to follow up on the three requests.

DENTAL BOARD Phil McCollum represented the board.

ARC 0164C Amendments to 15.1 pertain to fees and licensure. Mr. McCollum stated that the amendments streamline the initial licensure process for dentist applicants who apply for a license within three months of the next renewal date. In response to an inquiry from Sen. Bartz, Mr. McCollum stated that all dentists and hygienists are required to be fingerprinted as part of the licensure process. In response to an inquiry from Sen. Courtney, Mr. McCollum stated that 80 to 100 students graduate from dental school in Iowa each year, and he agreed to provide the committee with the number of graduates who remain in Iowa.

ARC 0170C Proposed amendments to ch 20 relate to dental assistant trainees and registered dental assistants. Mr. McCollum clarified for Rep. Heaton the proposed process by which a dental assistant trainee may attain certification of dental assistant trainee status and may reapply for dental assistant trainee status. In response to an inquiry from Rep. Vander Linden, Mr. McCollum stated that the amendments will reduce the number of disciplinary actions taken against dentists by the board regarding dental assistant certification-related issues. In response to an inquiry from Sen. Horn, Mr. McCollum stated that the amendments were sought by the dental board.

EARLY CHILDHOOD IOWA STATE BOARD Shanell Wagler represented the board.

ARC 0179C No action on 1.4(2)“d” pertaining to online guidelines and standards for services. Ms. Wagler also presented ARC 0178C pertaining to ch 9 of management department rules regarding fiscal oversight of the early childhood Iowa initiative. No action was taken on 9.1, which was amended to add a new definition of “audit.”

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson and Brian Tormey represented the commission.

ARC 0165C No questions on proposed amendments to 23.1 relating to emission standards.
ARC 0161C No action on the rescission of chs 140, 141, 148, 150 and 151 pertaining to hazardous waste.
ARC 0182C The Amended Notice of Intended Action adds three public hearings and explains further how the department intends to implement proposed ch 17, compliance and enforcement procedures. Ms. Paulson confirmed for Sen. Bartz that the purpose of ch 17 is to ensure consistency in department procedures.
ARC 0162C No questions on the Amended Notice of Intended Action that extended to July 3, 2012, the public comment period regarding proposed amendments to chs 20, 22 and 25 pertaining to air quality.

NATURAL RESOURCES DEPARTMENT Daniel Olson represented the department.

ARC 0167C No action on the amendments to 9.2(1) pertaining to groundwater hazard statements. Discussion followed about a topic unrelated to the rule making: the status of rules to be promulgated regarding unsewered communities, a subject addressed in 2011 legislation. In response, Mr. Olson, who does not have responsibility for rules on this topic, offered to request from the department and to provide the committee with information about the rules and the projected completion date.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

ARC 0183C No action on amendments to ch 41 regarding the shelter assistance fund.
ARC 0186C No action on amendments to ch 42 pertaining to the emergency solutions grant program.

Iowa Finance Authority (continued)

In response to an inquiry from Sen. Bartz during the fiscal overview, Mr. Thompson agreed to convey to the authority the concern that the federal limit of 7.5 percent for shelters' administrative costs might be too high in contrast with the more standard 5 percent.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 0173C No action on amendments to 10.20 and 26.1 regarding OSHA hazard communication standards for general industry and construction.

ARC 0175C Proposed amendments to 10.20 and 26.1 pertain to technical amendments to OSHA general industry and construction standards. In response to an inquiry from Sen. Bartz, Ms. Uehling stated that the CFRs adopted by reference may be found on the division's Web site by means of a link to the U.S. Department of Labor.

ARC 0168C Proposed amendments to chs 66, 68, 69, 71 and 72 concern an update of ASME codes, a checklist for installation of new conveyances, and technical changes by the elevator safety board. Discussion pertained to procedures, industry knowledge of this rule making, and elevator inspectors and the process of elevator inspection. Ms. Uehling stated that four members of the board are from the industry; that a serious hazard must exist before an elevator would be shut down; that 12 state inspectors and a credentialed contractor conduct annual elevator inspections; and that all inspection procedures are stated in rule.

ARC 0171C No questions on proposed amendments to ch 71 relating to temporary removal of an elevator from service and the fees related to temporary removal.

MEDICINE BOARD Mark Bowden represented the board. Other interested parties included Jeanine Freeman on behalf of the Iowa Medical Society.

ARC 0176C Proposed 22.5 pertains to the requirement that licensees report a hospital's limitation, restriction, suspension or revocation of a licensee's hospital privileges or any voluntary limitation, restriction, suspension or revocation of a licensee's hospital privileges to avoid an investigation or a hospital action.

ARC 0177C Proposed 23.1(48) concerns board authority to impose discipline for a licensee's failure to report to the board any actions taken against the licensee's hospital privileges.

Because ARCs 0176C and 0177C are directly related, Mr. Bowden addressed them concurrently. In response to an inquiry from Rep. Heaton, Mr. Bowden stated that the licensee's report of a hospital's sanction against the licensee is not made public unless a board investigation relating to a competence or conduct issue results in a charge by the board. In response to an inquiry from Rep. Olson, Mr. Bowden stated that the board's imposition of the requirement that a licensee report a hospital's sanctions on the licensee's privileges is similar to the mandatory reporting requirements already imposed by the board and reflects the board's expectation that the licensee be forthcoming about issues of professional conduct and competence.

Sen. Seymour stated that the sanctioning of a licensee's hospital privileges is conducted through a process guided by medical staff rules and regulations and through the board of trustees; that hospitals are required to self-report serious incidents to The Joint Commission (TJC) and, at the state level, to the department of inspections and appeals (DIA); and that there is a certain level of transparency in communications between the medicine board and the hospital regarding sanctions against a licensee.

Sen. Bartz suggested that in 23.1(48), the phrase "if applicable" be added to the phrase "a copy of a hospital action" to allow for cases in which the licensee takes voluntary action to avoid a hospital investigation, in which case there would be no copy of a hospital action.

Ms. Freeman stated that the statute sets forth how information about the disciplinary action or privileging action of hospitals comes to the attention of the board of medicine and expressed concern that the rule exceeds the statutory authority of Iowa Code section 147.135(3) by placing upon the licensee responsibility for mandatory reporting that is not provided for in statute. She stated that the current statutory language provides immunities and protections for licensees and hospitals and ensures that members of the public are protected by a board investigation of final actions taken by the hospital against the licensee.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Harbison represented the department.

ARC 0148C No action on amendments to chs 40, 41 and 65 that change the procedures for determining self-employment income for participants in the family investment and food assistance programs.

ARC 0149C No action on amendments to 75.1(39)“b” pertaining to premiums and reopening of cases canceled for nonpayment for recipients of Medicaid for employed people with disabilities.

ARC 0150C No action on amendments to 76.2(1) regarding telephone scheduling of interviews for determination of Medicaid eligibility.

ARC 0151C No action on amendments to 92.7(1)“a” pertaining to premium amounts for medical assistance benefits under the IowaCare program. In response to an inquiry from Sen. Bartz, Ms. Harbison stated that because there is no federally qualified health center (FQHC) in Mason City, IowaCare members who live near Mason City must travel to Fort Dodge for medical care.

ARC 0152C No action on amendments to 170.4(2)“a” that update the child care assistance fee schedule for fiscal year 2013.

Special Review The rule making under special review pertains to an increase to the foster family daily reimbursement rate and the adoption subsidy daily maintenance rates effective July 1, 2012. In compliance with 2011 Iowa Acts, chapter 129, section 141(4) and (11), this rule making was reviewed by the committee prior to rule making’s emergency adoption with an effective date of July 11, 2012. Ms. Freudenberg clarified for Sen. Bartz that the foster family daily reimbursement rate and the adoption subsidy daily maintenance rates are the same, but only one table is contained in the rule making.

Committee business The minutes of the June 12, 2012, meeting were approved.

The next meeting was scheduled for Tuesday, August 14, 2012, at 9 a.m.

Richard Johnson, LSA legal services division director, briefed the committee regarding an August visit to the Iowa general assembly by members of the parliament of Kyrgyzstan. The members’ visit will include attendance at the August meeting. Mr. Johnson stated that the members are interested in the committee’s formalized process of oversight; the informal and formal mechanisms to influence executive branch implementation of rules; and opportunities for citizen input in the rule-making process. Discussion pertained to plans for the visit.

Mr. Royce discussed the consequences of the nullification of ARC 9959B (IAB 1/11/12) by HJR 2008 of the 2012 Session of the Eighty-fourth General Assembly. He explained that HJR 2008 violated a basic rule of statutory construction by resurrecting the previous language of the rule. When language is stricken from a statute or rule, the rule or statute is removed, and prior language is not reinstated. HJR 2008 nullified a filing which contained both strike-through and underscored language. Even though the filing had gone into effect and the changes were implemented, the nullification had the effect of undoing both the strike-through and the underscore operations, and the previously existing language was restored to the Iowa Administrative Code. Mr. Royce suggested that in the future an actual administrative rule be nullified, not a filing that is identified by ARC number. Sen. Bartz suggested that no action be taken and stated that he did not know if he wanted to remove the power of the committee to nullify a filing. Mr. Royce will prepare a proposal regarding nullification of a rule for the August meeting.

Adjourned The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill